

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kenneth Daywitt, David Jannetta, Steven
Hogy, Merlin Adolphson, Michael
Whipple, and Peter Lonergan,

Case No. 20-cv-1743 (NEB/KMM)

Plaintiffs,

**ORDER FOR SCHEDULING
RECOMMENDATIONS**

v.

Jodi Harpestead, *DHS Commissioner*;
Marshall Smith; Nancy Johnston; Jim
Berg; Jannine Hebert; Kevin Moser;
Terry Kniesel; and Ray Ruotsalainen;

Defendants.

On June 15, 2021, the Defendants filed an answer to the complaint. (ECF No. 78.) Federal Rule of Civil Procedure 16(b)(2) requires the Court to issue a scheduling order as soon as practicable. This matter is exempted from the initial disclosure requirements under Federal Rule of Civil Procedure 26(a)(1)(B)(iv), and from the requirement that the parties confer pursuant to Federal Rule of Civil Procedure 26(f).¹ Nevertheless, the Court seeks the input of the parties prior to issuing a scheduling order. Accordingly, **IT IS HEREBY ORDERED** that:

¹ Rule 26(a)(1)(B)(iv) provides that a proceeding brought without an attorney by a person in the custody of a state is exempt from initial disclosures, and Rule 26(f)(1) provides that the parties to such an action are not required to meet to discuss scheduling and other issues prior to a scheduling conference. Here, all six named plaintiffs are unrepresented and each is held in the custody of the State of Minnesota at the Minnesota Sex Offender Program's Moose Lake facility.

On or before **August 16, 2021**, each side shall submit a Report setting forth a proposed schedule and any other recommendations regarding case management.² The parties shall provide information and proposals within the following categories:

DESCRIPTION OF CASE

1. Concise Factual Summary of Plaintiff's Claims;
2. Concise Factual Summary of Defendant's claims/defenses;
3. Statement of Jurisdiction (including statutory citations);
4. Summary of Factual Stipulations or Agreements;
5. Statement of whether jury trial has been timely demanded by any party;
6. Statement of whether all process has been served;
7. List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.

DISCOVERY SCHEDULE/DEADLINES

The parties shall provide a proposed deadline for the completion of fact discovery.

Fact discovery shall be commenced in time to be completed on or before
_____.

² Because each plaintiff is unrepresented by an attorney and, as non-attorneys, they are not authorized to take actions concerning the litigation on behalf of one another, they are reminded that each individual plaintiff must sign the scheduling recommendations report referenced in this Order. If the circumstances at the Moose Lake facility make it unreasonably difficult for the plaintiffs to coordinate and reach agreement on the scheduling recommendations, they are authorized to separately submit individual reports, in which case, only the person sending the report to the Court needs to sign it.

DISCOVERY LIMITATIONS

The parties shall provide proposed limitations on the use of written discovery.

1. No more than a total of _____ interrogatories, counted in accordance with Rule 33(a), shall be served by each side. No more than _____ document requests and no more than _____ requests for admissions shall be served by each side.
2. (If applicable) No more than _____ Rule 35 Medical Examinations shall be taken by Defendant and completed by _____

OTHER CASE MANAGEMENT RECOMMENDATIONS

The parties shall include any other recommendations for how this case should be managed.

EXPERTS

The parties shall advise the Court whether they anticipate that expert witnesses will be required at the time of trial and provide any proposals for the timing of the disclosures required under Rule 26(a)(2).

NON-DISPOSITIVE MOTION DEADLINES

The parties shall provide proposed deadlines for the filing of the following non-dispositive motions:

1. All motions which seek to amend the pleadings or to add parties must be filed and served on or before _____.
2. Non-dispositive motions and supporting documents, including those which relate to fact discovery, shall be filed and served on or before _____.

DISPOSITIVE MOTION DEADLINES

The parties shall also provide a proposal for a deadline by which all dispositive motions shall be filed and served:

All dispositive motions shall be filed and served (and heard or scheduled, depending on District Judge assigned) on or before _____.

TRIAL

The parties shall advise the Court whether they have or have not agreed to consent to the exercise of jurisdiction by the Magistrate Judge pursuant to Title 28, United States Code, Section 636(c). (If the parties agree, the consent form should be filed along with the Report required by this Order.)

The parties shall advise the Court of the date by which this case will be trial-ready and the anticipated length of any trial:

This case shall be ready for trial on _____. The anticipated length of (bench/jury) trial is ____ days.

Dated: July 14, 2021

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge